IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 329 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

VXL INDIA LTD.

Appearance:

1. INCOME TAX REFERENCE No. 329 of 1992

MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 17/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been raised for our opinion

for assessment year 1980-81:-

"Whether, the Tribunal is right in law and on facts in holding that the assessee is entitled to grant of weighted deduction in respect of interest on packing credit account, when the claim was raised for the first time before the Commissioner of Income-tax (Appeal) and no adequate proof was placed before him that such interest was paid ?"

2. We have heard Mr MR Bhatt, learned Standing Counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention is invited to the decisions of this Court in CIT vs. Jay Industries, (1992) 196 ITR 313 and in CIT vs. Girdharlal Vithaldas , (1992) 196 ITR 316. In the said decisions, this Court has held that since interest on packing credit account is paid in India, it is not entitled to weighted deduction under Section 35B. In view of the said decisions, irrespective of the question whether the claim was raised before the CIT (Appeals) for the first time, it has to be held that the assessee was not entitled to grant of weighted deduction in respect of interest on packing credit account.

Hence, on this basis, our answer to the question is in the negative i.e. in favour of the revenue and against the assessee.

4. The Reference accordingly stands disposed of.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)
zgs/-